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Advertising of Pest Control Products

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Advertising of Pest Control Products

Pest control products are regulated federally under the *Pest Control Products Act* and the associated *Pest Control Product Regulations*, as administered by Health Canada's Pest Management Regulatory Agency (PMRA). The aspects of pest control products regulated by the *Pest Control Products Act* include the advertising of these products, which includes any kind of promotion, whether on labels or packages, in communications with distributors, retailers, or consumers, or in advertisements.

This proposal serves to update the Regulatory Directives DIR96-02, *Environmental Label Claims and Advertising of Pest Control Products*, and DIR99-02, *Advertising Pest Control Products*, to reflect current legislation, regulation, and policy developments. This includes a move toward greater consistency with the United States Environmental Protection Agency's approach to promotional claims. Applicants/registrants, distributors, retailers, and commercial applicators of pest control products in Canada are encouraged to use this document in creating materials for advertising in Canada.

1.0 Introduction

This proposal sets out Health Canada-PMRA's interpretation of various requirements in the *Pest Control Products Act* and *Pest Control Product Regulations* and elsewhere regarding pest control advertising in Canada. In particular, it offers guidance on

- *Pest Control Products Act* and *Pest Control Product Regulations* requirements for the wording of pest control product advertising;
- other federal statutes and regulations relevant to pest control product advertising;
- the distinction between informational and promotional material;
- the timing of communications about pest control products with respect to the registration process; and
- the ways in which advertising requirements apply to different segments of the pest control products industry.

Note that this proposal discusses the key requirements pertaining to the advertising of pest control products, but does not cover related matters such as label specifications. For further information about these and other requirements please consult the *Pest Control Products Act*, the *Pest Control Product Regulations*, and the guidance documents in the Label Process Series, available on the Health Canada website at healthcanada.gc.ca/pmra.

2.0 Background

2.1 Guiding Principles

A few basic principles underlie Health Canada-PMRA's regulation of pest control product advertising. These are as follows:

- The basic goal of restrictions on the advertising of pest control products is to prevent false or misleading claims about the health, safety, environmental impact, or value of these products, whether these claims are expressed or only implied. This is because such claims have the potential to lead to unsafe or ineffective use of pest control products or to mislead users of a pest control product about its value or human health or environmental impact.
- Reliable evidence is always necessary to substantiate claims.
- Restrictions on advertising apply to all forms and media in which it may appear and to the advertising of all pest control products, whether these are conventional or non-conventional and are for commercial or non-commercial use. These restrictions also apply to the advertising of products that Health Canada-PMRA has determined to be pest control products and subject to regulation under the *Pest Control Products Act*, even when these products are represented as something else.

2.2 Legal Framework

Like most other requirements for pest control products, advertising requirements are spelled out primarily in the *Pest Control Products Act* and the *Pest Control Product Regulations*. However, certain aspects of these are indicated in other laws and regulations, so that authority for the regulation of pest control product advertising is to some extent shared with other government departments and agencies.

2.2.1 Key Definitions

The following *Pest Control Products Act* and *Pest Control Product Regulations* provisions set out some basic definitions.

- Subsection 2(1) of the *Pest Control Products Act* defines the key terms "advertise" and "distribute":
  - "Advertise" includes (but is not limited to) "making a representation by any means for the purpose of directly or indirectly promoting the distribution of a pest control product."
  - "Distribute" means "distribute in any way, whether or not for consideration [for example, payment], and includes sell, offer for sale or distribution, and expose, display or advertise for sale or distribution." In other words, whenever the *Pest Control Products Act* or *Pest Control Product Regulations* talks about "distribution", this includes advertising for sale or distribution.

These provisions indicate that what counts as "advertising" is very broad and includes any textual or other representation that serves to promote the distribution of a pest control product.

2.2.2 Restrictions

Other provisions in the *Pest Control Products Act* and *Pest Control Product Regulations* relevant to advertising are ones that spell out requirements bearing on permissible texts and symbols in advertising.

- Section 6 of the *Pest Control Products Act* indicates prohibited activities related to pest control product production, distribution, and use, including those related to advertising.
  - Subsection 6(1) states that "[n]o person shall manufacture, possess, handle, store, transport, import, distribute or use a pest control product that is not registered under this Act, except as otherwise authorized under subsection 21(5) or 41(1), any of sections 53 to 59 or the regulations."[1]
  - Subsection 6(7) states that "[n]o person shall package or advertise a pest control product in a way that is false, misleading or likely to create an erroneous impression regarding its character, value, quantity, composition, safety or registration."
- Section 21 of the *Pest Control Product Regulations* states that "[a] word or an expression that states or implies that the Government of Canada or any of its departments or agencies promotes, endorses or recommends the use of a pest control product must not appear on the package of, or in any advertisement for, a pest control product."[2]
- Subsection 23(2) of the *Pest Control Product Regulations* states that "[a]ny graphic design or symbol that relates to the pest control product may be shown on the marketplace label if it does not detract from or obscure the required information."
- Subsection 24(1) of the *Pest Control Product Regulations* makes reference to Schedule A of the *Food and Drugs Act* and states that "[a] label must not represent a pest control product as a treatment, preventive or cure for any disease, disorder or abnormal physical state" listed in the *Food and Drugs Act*'s Schedule A.[3]
- Subsection 24(2) of the *Pest Control Product Regulations* makes reference to subsection 2(1) of the *Health of Animals Act* and states that "[a] label must not represent a pest control product as a treatment, preventive or cure for any disease, as defined in subsection 2(1) of the *Health of Animals Act* that is required to be reported under that Act."

Together, these provisions indicate various requirements for the wording and presentation of text in advertising.

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1 See these provisions for details about these (limited) exceptions.

2 This section is changed from the previous *Pest Control Product Regulations*, whose wording was reflected in DIR99-02. The earlier prohibition applied to any direct or implied claim that a pest control product was "approved, accepted or recommended" by the Government of Canada or its departments or agencies. See Section 3 for more details.

3 This subsection *does* authorize Health Canada-PMRA to permit some public health claims. See Section 3 for more details.

2.2.3 Other Laws and Regulations

Various laws and regulations operate in parallel with the *Pest Control Products Act* and *Pest Control Product Regulations*. These provide additional restrictions on pest control product advertising or additional mechanisms to discourage false or misleading claims.

As noted above, Schedule A to the *Food and Drugs Act* and subsection 2(1) of the *Health of Animals Act* are relevant to subsections 24(1)-(2) of the *Pest Control Product Regulations*, since these spell out the diseases, disorders, and abnormal physical states that cannot be the subject of public health claims associated with pest control products.

The *Agriculture and Agri-Food Administrative Monetary Penalties Act* and the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations Respecting the Pest Control Products Act and Regulations* authorize Health Canada-PMRA to impose administrative monetary penalties (AMPs), instead of or in addition to the remedies already available under the *Pest Control Products Act* and *Pest Control Product Regulations*.

The *Competition Act* and the *Consumer Packaging and Labelling Act*, both administered by Industry Canada's Competition Bureau, are also relevant to pest control product advertising. The *Competition Act* prohibits any false or misleading representations of any kind for the purposes of promoting a business interest. The *Consumer Packaging and Labelling Act* similarly prohibits any false or misleading representations about a product on the product's packaging or labelling or any advertising of products with such packaging or labelling. These provisions thus overlap substantially with, and apply in addition to, ones in the *Pest Control Products Act* and *Pest Control Product Regulations*, and authorize their own penalties for non-compliance.

Also relevant to pest control product advertising are the *Organic Products Regulations, 2009* (*OPR*). These are monitored and enforced by the Canadian Food Inspection Agency and are part of the Canada Organic Regime, which includes the *Organic Production Systems General Principles and Management Standards* and the *Organic Production Systems Permitted Substances Lists*. Under this regime, substances registered by Health Canada-PMRA that meet the origin and usage stipulations of the *Permitted Substances Lists* may be used in organic agriculture. However, use of the term "organic" is restricted to end-products and is prohibited for agricultural inputs or ingredients, including pest control products.

The *Trade-marks Act* is implicated in the regulation of pest control product advertising in a less direct way. It establishes a system for registering trade-marks through Industry Canada's Canadian Intellectual Property Office (CIPO), involving requirements very different from those involved in the registration of pest control products. Thus, valid registration of a pest control product trade-mark through CIPO does not mean that this trade-mark will meet Health Canada-PMRA's requirements for pest control product advertising.

3.0 Guidance on Advertising

3.1 Different Forms of Advertising

The *Pest Control Products Act*'s broad definition of "advertise" means that advertising in the context of pest control products includes not only print, television, radio, Internet, and other forms of advertising but promotional material in any form, including promotional material on labels, on parts of packaging separate from labels, in communications with potential consumers, and in technical documents.

3.2 Pre-registration Promotion versus Information

The *Pest Control Products Act*'s definition of "advertise" prohibits a range of pre-registration communications about pest control products. Nevertheless, Health Canada-PMRA does recognize that applicants/registrants need to communicate basic technical information about pest control products to distributors, retailers, or commercial users prior to registration, whether this information relates to a new product or to a new use of an already registered product. For this reason, Health Canada-PMRA considers communication of key factual information about pest control products by applicants/registrants to relevant parties prior to the registration of these products to be consistent with the *Pest Control Products Act*. However, it continues to consider communications that constitute promotion or that pre-empt Health Canada-PMRA's decisions on registration or otherwise undermine its regulatory authority to be prohibited under the *Pest Control Products Act*.

Determining whether a given pre-registration communication does or does not meet the *Pest Control Products Act*'s requirements involves determining whether or not this message is promotional, and thus counts as advertising, or is only informational. To this end, Health Canada-PMRA has adopted the following criteria to help clarify the nature of a particular message. No single criterion is determinative of a message's status; and all of the criteria will be taken into account in making a determination about a message's content. Certain criteria, however, may be more relevant than others in assessing the nature of messaging content for different pest control product classes; and what one criterion indicates may be offset by what another indicates.

- *What is the content of the message?* A clearly informational message will involve facts described in an objective and balanced way and be able to withstand empirical scrutiny. By contrast, a clearly promotional message will involve a strong focus on the pest control product's benefits and involve vague claims that, for example, evoke a mood or feeling but have little or no factual content.

- *What is the context of the message?* A clearly informational message will be evidence-based and, for example, prepared and delivered by a research expert at an event with a non-commercial agenda. By contrast, a clearly promotional message will involve a highly product-related message delivered, for example, by an applicant/registrant's marketing expert at an event with a commercial agenda.

- *What audience or audiences is the message targeting*? A clearly informational message will typically have a limited and specialized target audience, such as growers wishing to learn about recent advances in weed control. By contrast, a promotional message will typically have a broad target audience, such as people with gardens.

For greater certainty, Health Canada-PMRA will consider the following content of pre-registration communications about a specific pest control product to be acceptable:

- the name of the pest control product;
- a general description of the pest control product applied for (biocide, fungicide, herbicide, insecticide, rodenticide) and a general statement of its uses (for example, "herbicide for use on weeds on home garden paths");
- the status of research related to the pest control product, including research results related to environmental impacts, plant/animal and human health and safety, and value; and
- the developmental or regulatory progress of the pest control product.

Such communication can be in any form or medium but may occur only between applicants/ registrants, retailers, and distributors, or between applicants/registrants and commercial consumers of pest control products. Pre-registration communications involving non-commercial consumers of pest control products will be considered unacceptable, given their greater potential to lead to mistaken views about the safety or value of a pest control product or to its ineffective or unsafe use.

Health Canada-PMRA will also consider it acceptable to display, during the course of discussions with retailers and distributors of pest control products, representative packaging for a product that is in the registration process, in order to indicate the appearance of the product if registered. Representative packaging can indicate the shape, size, colours, and very limited labelling information that provides a general description of the pest control product and its uses (as given in the second bullet above).

Health Canada-PMRA will continue to understand each of the following to be unacceptable:

- any speculation on registration approval (including any indication that the product is about to be approved) or the anticipated date of the product's availability;
- any solicitation of orders for or selling of the product prior to receipt of the registration certificate and any communication that implies such a solicitation or sale (including the citing of the product's anticipated price or price range, which will be presumed to count as a solicitation of orders); and
- any reference to the specific content of the final label.

Finally, Health Canada-PMRA will understand written communications to require the inclusion of the following statement that approval has not yet been granted:

> **This product has not completed the registration process under the *Pest Control Products Act* and thus cannot be manufactured, imported, distributed or used in Canada at this time.**

Oral communications will also be understood to require a clear indication that the registration process has not been completed.

Health Canada-PMRA will continue to understand the expression "registration pending" as unacceptable. Note that this expression is crucially different from the similar "patent pending", which is acceptable for products for which a patent application has been filed. Unlike a product for which a patent is still pending, a pest control product cannot be distributed if its registration is still pending. Moreover, even if no patent is granted for a product, the product can still be distributed, whereas a pest control product that fails to be registered cannot be distributed.

3.3 Advertising Claims

3.3.1 Substantiation of Claims

As noted in Section 2, reliable evidence is necessary to substantiate factual claims made in advertising; and all such claims must be precise enough to withstand scrutiny and must be consistent with available evidence. Accordingly, any factual claim about the human health effects, environmental effects, or value of a pest control product, package, or service made by a person with a commercial interest in a pest control product must be supported by reliable evidence.

The substantiation of factual claims is always part of the registration process whenever these claims appear as part of a label. Other kinds of factual claims that are appropriate for packages or advertisements but not labels (for example, testimonials) must also be supported by reliable evidence but may be subject only to post-registration assessment. The factual claims made in testimonials must be directly related to and not exceed the scope of factual claims that have been substantiated as part of the registration process.

3.3.2 "New" and "Improved"

The terms "new" and "improved" in reference to pest control product formulations are acceptable for use in advertising for a period of one year from the date that a new formulation is registered. These terms are also acceptable for use in packaging for a period of one year from the date that new packaging is first available for sale. Advertising that uses "new" or "improved" must clearly indicate what aspect of the product is "new" or "improved". Any advertising that reasonably creates the false impression that a formulation rather than packaging is "new" or "improved" is unacceptable. Use of "new" or "improved" must always be accurate and, where this is relevant, based on reliable evidence.

3.3.3 Health and Safety Claims

Health Canada-PMRA takes broad unqualified claims such as "safe" or "safe for indoor use" to be unacceptable. This is because such claims can be misleading, given that all pest control products carry some degree of risk. Health Canada-PMRA also considers it misleading to suggest that a product is "safe" or that it can be used without undesirable effects simply because it is derived from nature.

3.3.3.1. "X-free" Claims

Health Canada-PMRA takes claims that a particular ingredient is absent from a pest control product ("X-free") to be permissible, subject to certain restrictions. These are as follows:

- The claim that a pest control product does not contain a particular active ingredient is unacceptable if this ingredient has never been associated with the product class that includes this product.

- If a pest control product does not contain a particular active ingredient that is or has recently been present in other registered products in the same product class, this must be made clear (by such language as "X-free, as always"). If the ingredient in question is still present in other registered products in the same product class, advertising must not imply that the absence of this ingredient is related to its having any undesirable effects.

- If a particular active ingredient has recently been removed from a pest control product formulation, the claim that this ingredient is absent from the formulation (as indicated by such language as "now X-free") may be made for up to one year from the date of the registration of the new formulation. After this time, the claim must be altered to reflect the fact that the change is no longer recent.

Note that if advertising for a product not registered as a pest control product makes an "X-free" claim related to a substance generally associated with registered pest control products, Health Canada-PMRA will interpret this advertising to indicate that this product is being represented as a pest control product that requires registration under the *Pest Control Products Act*. Manufacturers, distributors, and retailers of such products should consider these consequences carefully before making any "X-free" claims.

3.3.3.2. Public Health Claims

As noted above, subsection 24(1) of the *Pest Control Product Regulations* prohibits public health claims regarding the "diseases, disorders, and abnormal physical states" listed in Schedule A of the *Food and Drugs Act*. This prohibition, however, does not extend to public health claims regarding any other diseases, disorders, or abnormal physical states, including Lyme disease and West Nile virus, which have been the subject of public health claims permitted in Canada. Health Canada-PMRA will continue to consider specific public health claims to be acceptable in advertising for pest control products when they meet *all* of the following criteria:

- The claim pertains to a public health risk recently recognized or recognized to be of continuing concern in Canada and of which the Public Health Agency of Canada has recently notified or continues to notify the public.

- The claim is related to a pest control product belonging to a class of products recognized by Health Canada-PMRA to have public health benefits in their ability to control a particular pest; and Health Canada-PMRA has recently notified or continues to notify the public of the public health benefits of this class of products.

- Health Canada-PMRA has determined during the registration of a particular pest control product that this product has value in controlling the pest that is the subject of the public health claim.

- Health Canada-PMRA has decided, in consultation with the Public Health Agency of Canada, that the public health claim serves the interest of public health.

- Public health claims made in advertising pertain to the control of the pest indicated on the label, for which the pest control product is registered.

Health Canada-PMRA will consider advertising claims of the following general form to be acceptable:

> **When used as directed, this pest control product will repel/control/suppress Pest X, which may carry Disease Y.**

Health Canada-PMRA will continue to consider as unacceptable public health claims that imply that the product can or will prevent or control disease or offer health protection, including claims that involve such wording as "prevents infection", "controls infection", "prevents cross infection" and any claims indicating control or mitigation of any disease, infection, or pathological condition.

3.3.4 Environmental Claims

Health Canada-PMRA will continue to take environmental claims in advertising as needing to fulfil two basic requirements in order to avoid being false or misleading:

- Environmental claims must be made in a way that makes clear whether the environmental attribute or benefit being claimed pertains to a product, a product's package, or a service or only to some aspect of the product, package, or service. This requirement does not apply to minor, incidental components of a product or package unless this would make an environmental claim deceptive.

- Environmental claims must be specific, complete, and relevant and must be supported by reliable evidence. Claims that make use of vague terms such as "environmentally friendly", "ecological", "eco-", and "green" or that are broad and unqualified, such as "Will not harm bees" (as opposed to the acceptable "Will not harm bees when used as directed"), are understood to be misleading and thus continue to be unacceptable.

Recyclability claims may apply either to the pest control product itself or to its packaging. Claims may be made in writing or by means of the Möbius loop symbol (the universal recycling symbol, a sequence of three clockwise-oriented arrows forming a triangular Möbius strip), together with any necessary qualifying statement.

Claims of recycled packaging content may be made using the appropriate Möbius loop symbol with a qualifying statement that indicates the recycled content as a percentage by weight of the total packaging content.

Biodegradability claims for pest control products have been permitted in the past. However, it is increasingly recognized that biodegradability claims have a very high potential to be misleading, particularly given the great variation in the time required for a given product or its packaging to degrade. For this reason, Health Canada-PMRA will consider acceptable only those biodegradability claims that are based on reliable scientific evidence and that specify the half-life of the biodegradable substance in a particular medium. Any biodegradability claims that are not supported by such evidence and specific information should be avoided.

3.3.5 Value Claims

As indicated in Section 2.1, value and other claims in advertising must be supported by reliable evidence. In particular, value claims that make use of terms indicating a context for the use of a pest control product (for example, "B.C. rainforest") may be used in heightened efficacy claims (for example, "B.C. rainforest strength") only when such claims are supported by reliable evidence. Such terms may also be used without making claims of heightened efficacy, in claims such as "B.C. rainforest use", provided that they are not used in a misleading manner, do not imply heightened efficacy, are not used in the product name, and are not highlighted in advertising to the exclusion of other acceptable use sites. Terms that indicate an improbable context/pest relationship (for example, "jungle use" for a conventional insect repellent) are unacceptable.

Where applicable, efficacy claims must be consistent with the principles set out in Regulatory Directive DIR2003-04, *Efficacy Guidelines for Plant Protection Products*, for the use of the expressions "control" and "suppression" to indicate level of pest management. Please consult DIR2003-04 for further details.

Non-conventional pest control products, which may not be as efficacious as conventional products, may accordingly require a lower-level claim that uses such expressions as "reduces" or "may inhibit". Please consult Regulatory Directive DIR2012-01, *Guidelines for the Registration of Non-Conventional Pest Control Products*, for further details.

3.3.6 "Organic", "Natural", and Similar Claims

As noted in Section 2.2.3, Canada's organic regime does not encompass the certification of inputs from the *Permitted Substances Lists* or of non-agricultural organic products as "organic". Accordingly, the description of pest control products as "organic", "biologique" (when used as the French equivalent of "organic"), or "organique" are unacceptable in advertising. (Note, however, that the term "biologique" is acceptable in appropriate advertising contexts when it is intended to mean "biological".)

Health Canada-PMRA does recognize, however, that certain pest control products can be used in organic production. To this end, in the event that reliable assessment has confirmed, as part of the registration process, that a pest control product contains only active ingredients acceptable for organic production systems under the Canada Organic Regime, Health Canada-PMRA will consider the following language to be acceptable in advertising for this product:

> **This pest control product can be used in organic production systems, in accordance with the Canada Organic Regime *Permitted Substances Lists*.**

The terms "natural" and "natural source" and related expressions such as "naturally occurring" remain unacceptable for all pest control product advertising. This is because these terms may be misleading, in implying that products described as having "natural" or "natural source" ingredients are safer to use or have a smaller environmental impact than their counterparts with synthetic ingredients, even though neither may be the case. (The existence of naturally sourced active ingredients such as the neurotoxins rotenone and strychnine makes it clear that "natural" does not mean "safe" or without environmental impacts.)

The claim that a (non-conventional) pest control product is of "food grade" is acceptable only if the product meets the Food Chemicals Codex specification and has been certified by an independent third-party certifying body as "food grade" and this information has been provided to Health Canada-PMRA during the course of the product's registration.

The claim that a pest control product is "food-based", or any reference to the suitability of the product or its active ingredient for consumption, is unacceptable. This is because of the risk that this creates that users of the product will fail to follow label directions in the mistaken belief that the product poses a low risk to human health or safety or the environment, which may not be the case.

For similar reasons, Health Canada-PMRA now considers the term "botanical" in descriptions of pest control products to be unacceptable, given that it similarly implies greater safety than products not derived from plant extracts and thus also has a high potential to be misleading.

3.3.7 Claims Related to Certification

Pest control product advertising must not state or imply, either in its wording or indirectly through a logo, that a product is certified by an independent third party when no independent certification has occurred. In addition, pest control product advertising must not make reference to certification that does not correspond to relevant Canadian standards, such as those governing the use of the term "organic" (which, as noted above, is appropriate in Canada only for end-products and not for inputs).

3.3.8 Claims in Brand Names and Logos

The *Pest Control Products Act* prohibits advertising a pest control product "in a way that is false, misleading or likely to create an erroneous impression regarding its character, value, quantity, composition, safety or registration". This prohibition encompasses pest control product brand names and logos as well as more obvious forms of advertising. The reason for this is that false or misleading claims can be made just as easily through a brand name or logo as through other means. The fact that a (potentially or inherently) false or misleading pest control product brand name or logo is a trade-mark registered with CIPO does not insulate it from scrutiny under the *Pest Control Products Act*.

Health Canada-PMRA recognizes, however, that brand names in particular are an important marketing tool requiring substantial investments in time and money, and thus will consider an otherwise misleading brand name to be acceptable in advertising if certain measures are taken to avoid the misleading effects of the name. These measures, which are detailed below, involve only minor changes to text and preserve the brand name itself.

Note that many brand names are potentially misleading, although this potential often depends on specific facts about the composition, efficacy, or effects of the products they are associated with. For example, the following brand names may or may not be misleading:

- Regarding composition: "Nothing But Diatom-Urth".
  - Not misleading if the product consists only of diatomaceous earth.
  - Misleading if the product contains other ingredients.

- Regarding efficacy: "Ragweed Professional Use".
  - Not misleading if the product is suitable for professional applicators.
  - Misleading if the product is for domestic use.
- Regarding safety or environmental effects: "Pet-Friendly".
  - Not misleading if the product can be used safely with all household pets.
  - Misleading if the product can be used safely only with large dogs.

Other brand names, however, are inherently misleading. This may be because these names imply some quality that cannot be substantiated or make claims that are too vague to be substantiated, as the following names do:

- Regarding composition: "Bio-ganic", "Purity".
- Regarding efficacy: "Eradicator", "Germ-Shield".
- Regarding human health and safety or environmental effects: "Healthy", "Green", "Eco-", "Earth Friendly".

Alternatively, this may be because the names overstate a product's composition, efficacy, or effects, as the following names do:

- Regarding composition: "100% Pure".
- Regarding efficacy: "All-Kill", "100% Protection".
- Regarding human health and safety or environmental effects: "Safe", "Enviro-Safe".

Still other brand names are misleading because they imply that a product is a pest control product even though it has not been registered as such.

(Note that all of the above remarks also apply to claims that use such expressions, even when these expressions are not actually part of brand names.)

Applicants/registrants can avoid creating misleading effects in their product brand names simply by avoiding certain expressions, such as "safe", when creating these names. They can also do so by adopting one or more of the following measures in their advertising:

- dissociating a (potentially or inherently) false or misleading expression, company name, or trade-mark from the rest of a product brand name by putting this expression, name, or mark into a type size noticeably smaller than the type size of the rest of the product brand name and in a different font and/or colour from the rest of the product brand name;
- dissociating a (potentially or inherently) false or misleading expression, company name, or trade-mark from the rest of a product brand name by placing this expression, name, or mark away from the rest of the product brand name;

- qualifying a product brand name with
  - an asterisk that appears in type of the same size, font, and colour as the product brand name; and
  - a corresponding asterisk together with a disclaimer; both of these must be at least half the type size of the product brand name and in the same font and/or colour as the product brand name, and the disclaimer must indicate that the word or phrase is not intended to make the claim that it appears at first sight to make.

In conjunction with these measures, the placement of the term "Brand" next to a company name or trade-mark that is part of a product brand name can also help to make an otherwise misleading brand name acceptable. To have the appropriate effect, the term "Brand" must appear in text of the same type size, font, and colour as this name or mark, in order to reduce the misleading effect of the brand name.

3.3.9 Comparative Claims

Claims that include comparative statements are consistent with the *Pest Control Products Act*, the *Pest Control Product Regulations*, and the *Competition Act*. However, like all other factual claims about pest control products, comparative claims must not be false, misleading, or likely to create an erroneous impression about the character, value, quantity, composition, safety, or registration status of a pest control product. In particular, the statement must clearly indicate the basis of the comparison with competing products and must be substantiated by reliable evidence. Acceptable and unacceptable comparative claims can, of course, take many forms, such as the following ones:

- *Acceptable claim*: Brand X herbicide costs, on average, 50% less to use for treating wheat fields than Brand Y herbicide, the leading national brand.
- *Unacceptable claim*: Brand X herbicide costs less than Brand Y herbicide, the leading national brand.

3.3.10 Claims Stating or Implying Promotion, Endorsement, or Recommendation by the Government of Canada

An applicant's successful completion of the Health Canada-PMRA registration process means that Health Canada-PMRA has approved the applicant's pest control product for the applied-for uses. However, statements indicating successful completion of the registration process have the potential both to mislead and to undermine the neutrality of Health Canada-PMRA as a regulator of pest control products.

In balancing these competing considerations, Health Canada-PMRA will consider the following statement in advertising for pest control products to be acceptable:

> **Read label directions carefully before using this product. Use this product only for the uses for which it has been registered by Health Canada (PCP Registration #...).**

Slight variations in the wording of this statement may also be acceptable.

Health Canada-PMRA will also consider "Health Canada PCP Registration Number X" or "PCP Registration number X" to be acceptable in advertising. However, any wording in advertising that states or implies that Health Canada-PMRA, Health Canada, or the Government of Canada approves or approves of, endorses, promotes, or recommends the use of a pest control product will continue to be unacceptable, as will abbreviated claims in advertising such as "Registered by Health Canada-PMRA" and "Health Canada-PMRA registered". Such abbreviated claims are potentially misleading in that they allow consumers to make unwarranted inferences about a product — in particular, that the product's registration is not limited to the particular uses indicated on the label.

3.4 Advertising and the Grower Requested Own-Use Program

Grower Requested Own-Use (GROU) products are regulated through the *Pest Control Products Act* and *Pest Control Product Regulations* and any advertising must be consistent with the requirements spelled out in these documents.

A GROU product cannot be sold, offered for sale or distribution, exposed, displayed, or advertised for sale or distribution in Canada; and once the GROU product arrives in Canada it cannot be formulated, repackaged, or prepared for distribution.

No party is permitted to engage in an activity that involves or is intended to promote the sale of a GROU product in Canada. However, activities intended to promote the purchase abroad of a GROU product by the grower are permitted unless they involve purchase of the product on behalf of growers rather than by growers themselves.